IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 599 OF 2004

Mr.Sunil Babanrao Deshmukh .. Petitioner

vs

State of Maharashtra & ors. .. Respondents

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Mr.A.M.Joshi for Petitioner

Mr.R.D.Rane for Respondent nos. 1 & 2.

Mr.Dilip Bodke for Respondent no.3

..

CORAM : A.P.SHAH AND

S.U.KAMDAR, JJ

DATE : 28TH SEPTEMBER, 2004.

ORAL JUDGMENT (Per S.U.Kamdar, J)

1. By the present petition, the petitioner is seeking a writ of mandamus directing the respondent no. 3 to give to the petitioner an appointment in degree scale right from the date of his initial appointment. The petitioner thus, effect seeks the pay scale benefits as a degree scale teacher.

The petitioner is seeking the aforesaid reliefs in the light of the following facts:

2. On 21st June, 1997 an advertisement was published in the "Daily Pudhari " inviting applications for English Teachers in the respondent no. 3 institution. On 4th July, 1999 the petitioner was appointed as an Assistant Teacher in degree scale of Rs.1400-Rs.2600. In 1997, the petitioner was issued one more appointment order appointing him with effect from 4th October, 1997 in graduate scale. The third respondent institution forwarded thereafter the proposal of the petitioner to the Education Officer, Zilla Parishad, Sangli. However, by an order dated 9th July, 1999 the Enquiry Officer granted approval in under graduate scale and not in degree scale. It is the case of the petitioner that in 1999 new post was created in the degree scale and the petitioner made a representation for placing him in the said post. According to the petitioner, on 4th October, 2000 the Education Officer, Zilla Parishad, Sangli passed an order directing the petitioner to be placed by way of upgradation in degree scale. The petitioner in the present case is also claiming the said scale

inter alia contending that the petitioner though senior in appointment, his juniors being respondent nos. 4 and 5 have been appointed as Assistant Teachers and have been given the graduate scale. It is his case that thus the petitioner's entitlement has been defeated by granting such a scale to respondent nos. 4 and 5. However, the petitioner has not been given appointment and hence the present petition.

3. The respondents have filed an affidavit and it has been inter alia contended that in fact there was no post available in the B.Ed scale at the relevant time and therefore the question of appointment of the petitioner in the said pay scale cannot and does not arise.

4. We have heard the parties. In our view, the matter of inter se seniority including availability of number of posts is required to be decided by the Education Officer. According to us, for the purpose of allowing the claim of the petitioner, there must exist a clear vacancy in the graduate scale. The Education Officer is required to therefore reassess whether there are clear vacancies available and whether the petitioner is entitled to the graduate

scale in supercession of the claim of the respondent nos. 4 and 5 as well as one Mr. A.J.Doiphode whose appeal is pending before the School Tribunal.

5. Accordingly, we direct the Education Officer, Zilla Parishad, Sangli being the 2nd respondent herein to consider inter se the claim of seniority cum entitlement of graduate scale in the various posts between the petitioner and the respondent nos. 4 and 5 and one Mr. Doiphode whose appeal is pending before the School Tribunal.

6. We accordingly remand the matter to the Education Officer, Zilla Parishad, Sangli with a direction to consider the matter afresh in accordance with the directions given by us in the present order. The Education Officer, Zilla Parishad, Sangli will pass a speaking order within a period of three months from the date of this order. In the meanwhile, respondent nos. 4 and 5 will continue to hold their posts and their position shall not be disturbed.

7. We dispose of the present writ petition

accordingly with the aforesaid directions. However, there will be no order as to costs.

(A.P.SHAH)

(S.U.KAMDAR, J)